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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/662,849 Confirmation No. : 2146
First Named Inventor : Martin SCHUESSLER
Filed : September 15, 2000
TC/A.U. : 1764
Examiner : A. Wachtel

Docket No. : 102063.49153US
Customer No. : 23911

Title : System for Heating and/or Converting at Least One Medium

PETITION TO WITHDRAW FINALITY UNDER 37 C.F.R. § 1.181

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully submits that the Office Action issued on May 3, 2006, was made final prematurely, and accordingly, the finality of this Office Action should be withdrawn.

Regarding the propriety of final rejections on a second or subsequent action on the merits, M.P.E.P. § 706.07(a) states that such actions:

shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

It is respectfully submitted that the new grounds of rejection in the Office Action issued on May 3, 2006 was not necessitated by Applicant's amendment of

claim 1 submitted in the Amendment filed November 28, 2005, and was not based on information cited by the Applicant in an Information Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c).

A non-final Office Action was issued on July 27, 2005, rejecting claims 1-4, 6, 8-16 under 35 U.S.C. § 103(a) as being unpatentable over the combination of U.S. Patent No. 6,159,434 to Gonjo et al. (“Gonjo”), German Patent No. DE 197 43 673 A1 to Schussler et al. (“Schussler”), and U.S. Patent No. 5,209,906 to Watkins et al (“Watkins”).

On November 28, 2005, Applicant submitted a Reply to the Office Action with minor amendments to claim 1. Specifically, Applicant added the word “modular” at the beginning of the claim and deleted “one of an evaporator.”

A final Office Action was issued on May 5, 2006, rejecting claims 1-4, 6, 8-16 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Gonjo, Schussler, and U.S. Patent No. 5,316,747 to Pow et al. (“Pow”).

Accordingly, the final Office Action of May 5, 2006 replaced Watkins with Pow, which the Office Action relies upon for the disclosure of “insulating plates provided between the end plates and layers which are respectively adjacent to the end plates” as recited by claim 1. (Office Action of May 5, 2006, Page 5, paragraph 1 continuing on page 6). However, Applicant’s Reply submitted on November 28, 2005 did not amend this claim recitation. Therefore, Applicant’s amendment of claim 1 did not necessitate a new ground of rejection. Instead it

appears this new grounds of rejection was necessitated by the failure of Watkins to disclose the insulating plates of Applicant's claim 1.

Additionally, Pow was not cited by the Applicant in an Information Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c).

Because the new ground of rejection of claim 1 in the final Office Action issued on May 3, 2006 was not necessitated by Applicant's amendment and is not based on information cited by the Applicant in an Information Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c), it is respectfully submitted that the finality of this Office Action is improper and should be withdrawn.

It is believed that no fees are due for this petition. However, if fees are required this paper should be considered as an authorization to charge Deposit Account No. 05-1323 (Docket #0112210.49153US) for such fees.

Respectfully submitted,

May 10, 2006



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